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9 *Attorneys for Defendant s* CITY OF LOS ANGELES, JOHN MACCHIARELLA,
10 EFREN GUTIERREZ, TERENCE KEYZER, GENE PARSHALL, CHARLIE BECK

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 EDWARD L. ARCH,

14 Plaintiff,

15 vs.

16 DET. GENE PARSHALL, DET.
17 JOHN MACCHIARELLA, DET.
18 EFRIN GUTIERREZ, DET.
19 TERENCE KEYZER, WILLIAM
20 BRATTON, CHARLES BECK,
21 JOHN DOE, LOS ANGELES
22 POLICE DEPARTMENT, CITY OF
23 LOS ANGELES, and TEN
24 UNKNOWN NAMED
25 DEFENDANTS ("DOES" 1-10),
26 inclusive,
27 Defendants

CASE NO.: CV11-04454 DSF (PJWx)

Assigned to: Honorable Dale S. Fischer
Assigned to: Magistrate Patrick J. Walsh

***STIPULATION AND ~~PROPOSED~~
PROTECTIVE ORDER RE PRIVILEGED
DOCUMENTS***

28 ***TO THE HONORABLE COURT:***

After the Plaintiff EDWARD ARCH, individually, (hereinafter referred to as
"Plaintiff"), by and through his attorneys of record, Jeff Dominic Price, Esq, by and
through Jeff Dominic Price, Esq. and Defendants CITY OF LOS ANGELES, LOS

1 ANGELES POLICE DEPARTMENT, JOHN MACCHIARELLA,
 2 EFREN GUTERREZ, TERENCE KEYZER, GENE PARSHALL, CHARLIE BECK
 3 (hereinafter referred to as "Defendants"), by and through their attorneys of record,
 4 Carmen A. Trutanich, City Attorney, Cory M. Brente, Supervising Assistant City
 5 Attorney and Christian R. Bojorquez conferred regarding outstanding discovery
 6 issues. **IT IS HEREBY STIPULATED AND AGREED** between the parties hereto,
 7 by their undersigned counsel of record, that the following Protective Order, and its
 8 terms shall govern documents that are designated confidential documents and/or
 9 writings because Defendants believe, in good faith, that these documents and/or
 10 writings are privileged, confidential, private or sensitive nature. This will be
 11 accomplished by affixing to such document or writing a legend, such as
 12 "Confidential," "Confidential Documents," "Confidential Documents Subject to
 13 Protective Order" or words of similar effect. Documents and writings so designated,
 14 and all information derived therefrom (hereinafter, collectively, "Confidential
 15 Information"), shall be treated in accordance with the terms of this
 16 stipulation/protective order.

17 18 19 ***I. GOOD CAUSE STATEMENT***

20 City Defendants provide the following "Good Cause Statement." It should be
 21 noted that Plaintiff does not necessarily agree with the assertion of good cause, but
 22 has agreed to sign the stipulation in an attempt to narrow down any discovery
 23 disputes that may remain.

24 25 ***A. Administrative Documentation:***

26 The Los Angeles Police Department conducts internal administrative
 27 investigations of Officer Involved Uses of Force and Complaint Investigations
 28 (hereinafter "Administrative Investigations") and also maintains a personnel file on

1 its officers which includes personnel training information. Once an Administrative
2 Investigation is initiated, a formal investigation number is prepared. Such
3 investigations are reviewed by appropriate command officers in the Department. This
4 review has several purposes: (1) to determine whether the involved officers violated
5 any Department policies or procedures; (2) to determine whether administrative
6 discipline and/or retraining of the involved officers is necessary; and (3) to ascertain
7 if police policies and procedures in such areas as supervision, training, tactics,
8 policies, etc. should be modified. Administrative Investigations are an essential aid to
9 providing critical evaluation of Department officers and policies, and to determine the
10 most effective way to serve the citizens of Los Angeles.

11 The Department strives to maintain the confidentiality of an officer's personnel
12 package and Administrative Investigations, and the information contained therein, in
13 recognition of the protections granted pursuant to Penal Code § § 832.5, 832.7, and
14 832.8 and 1040 et al. of the California Evidence Code. Just as officer's personnel
15 package is maintained as confidential, so too are the Administrative Investigations
16 involving a particular officer(s). Administrative Investigations, like an officer's
17 personnel package, include information which is both personal in nature and could
18 potentially impact the liberty interests of the involved police officers and/or civilians
19 named within. The information obtained from personnel packages and
20 Administrative Investigations can, and have been used to initiate disciplinary action
21 against officers, as well as evidence in disciplinary proceedings where the officer's
22 conduct was considered to be contrary to Department policy. At this time, the parties
23 have agreed that certain Administrative Investigation information will be provided
24 pursuant to the terms set forth in this Protective Order, as well as the underlying Use
25 of Force Report & Complaint Investigation Materials. As a result, the parties have
26 agreed to this Proposed Protective Order covering these records for the following
27 Good Cause reasons:

28 ...

1 a. Administrative Investigations are maintained as confidential reports and
2 are considered part of the individual officers' personnel record. Administrative
3 Investigations include information which is both personal in nature and could
4 potentially impact the liberty interests of the involved police officers and/or civilians
5 named within. The information obtained from Administrative Investigations can and
6 have been used to initiate disciplinary action against officers and as evidence in
7 disciplinary proceedings where the use of force or tactics used were considered to be
8 contrary to Department policy.

9 b. Unfettered release of Administrative Investigations have the potential for
10 untold negative results. In terms of societal interests, it would inhibit the
11 Department's ability to frankly engage in critical self-analysis. Public exposure of
12 many Administrative Investigations could severely threaten the safety and well-being
13 of the individuals, their families and associates. Many Administrative Investigations
14 include embarrassing facts. At a minimum, disclosure of an entire Administrative
15 Investigation would cause needless intrusion of privacy rights and have a negative
16 effect on the Department's effort to conduct these important investigations. Indeed,
17 for all of these reasons, persons interviewed by Investigators are advised that their
18 statements are being taken for the confidential use of the Department.

19 c. The materials and interview statements of Administrative Investigations
20 are maintained in protected files in order to maintain their confidentiality. They are
21 not routinely shown to other city departments. Even then, information which is not
22 clearly relevant to the rationale governing the request is redacted to ensure the utmost
23 regard for the privacy rights of the mentioned within a given report. The reports are
24 not available to the general public except by court order. In all instances, the
25 Department requests in camera hearing to determine the relevance for releasing all or
26 part of a given report, again to ensure the constitutionally protected privacy rights of
27 those named or otherwise identified within the body of the report.

28 ...

1 d. In each case involving court-ordered disclosure of information from a
2 Administrative Investigation sought in state or federal court, it is Department policy
3 to seek a protective order limiting use of the information to the case at trial and
4 identifying those persons who may properly be granted access to the information.
5 Absent a protective order, it becomes unrealistic to conceive that the large numbers of
6 attorneys, secretaries, law clerks, paralegals and witnesses involved in many cases
7 will be able to maintain proper confidence of personal, private material absent an
8 order which clearly delineates their responsibilities. The orders further request that
9 said records be returned to the Department after the case has terminated, either by
10 final judgment or otherwise. This request serves to ensure that intrusion into the
11 privacy and employment rights of those involved is limited to the particular case in
12 which the facts are relevant.

13 e. Even with a carefully written protective order, the release of portions of
14 an Administrative Investigation, without prior judicial review to determine relevancy
15 and assess privacy concerns, ignores the constitutional protection given to individual
16 privacy under the United States and California Constitutions and which a third-party
17 such as the Department is obligated to assert. The issuance of an appropriate
18 protective order makes certain that these privacy concerns are not compromised
19 beyond that degree necessary to the issues before the court. Accordingly, on behalf
20 of the Los Angeles Police Department and those persons identified within a given
21 Administrative Investigation, the Defendants respectfully request these procedural
22 protections in the instant case.

23
24 ***B. Murder Book Investigation & Related Documentation:***

25 The Los Angeles Police Department conducts thorough Investigations of
26 Crimes that take place within the City of Los Angeles. Within Homicide
27 Investigations, Investigations (hereinafter "Murder Investigations"), the Investigators
28 maintain a "Murder Book" regarding their Investigation which includes personal,

1 private and some privileged information that is not always disclosed to made known
2 to the ultimate Defendant(s) in a criminal case, other than their Counsel. Once an
3 Murder Investigation is initiated, these Murder Books are an essential aid to
4 providing critical evaluation of the underlying Murder Investigation.

5 The Department strives to maintain the confidentiality of this information and
6 provides the Murder Book to the Prosecuting Entity who thereafter discloses the
7 information to Counsel for the Defense. Murder Investigations include information
8 which is both personal in nature and could potentially impact the safety of the
9 involved parties and/or civilians named within. At this time, the parties have agreed
10 that the Murder Book will be provided pursuant to the terms set forth in this
11 Protective Order, as well as the underlying Complaint Investigation Materials. As a
12 result, the parties have agreed to this Proposed Protective Order covering these
13 records for the following Good Cause reasons:

14 a. Administrative Investigations are maintained as confidential reports and
15 are considered part of the individual officers' personnel record. Administrative
16 Investigations include information which is both personal in nature and could
17 potentially impact the liberty interests of the involved police officers and/or civilians
18 named within. The information obtained from Administrative Investigations can and
19 have been used to initiate disciplinary action against officers and as evidence in
20 disciplinary proceedings where the use of force or tactics used were considered to be
21 contrary to Department policy.

22 b. Unfettered release of information contained in a Murder Investigation
23 have the potential for untold negative results. Public exposure of information
24 accumulated through Murder Investigations could severely threaten the safety and
25 well-being of the individuals, their families and associates. At a minimum, disclosure
26 of an entire Murder Investigation would cause needless intrusion of privacy rights
27 and have a negative effect on the Justice System and the Department's effort to
28 conduct these important investigations. Indeed, for all of these reasons, persons

1 interviewed by Investigators are advised that their statements are being taken for the
2 confidential use of the Department.

3 c. The materials and interview statements of Murder Investigations are
4 maintained in privacy in order to maintain their confidentiality. They are not
5 routinely shown to other uninvolved individuals. Even then, information which is not
6 clearly relevant to the rationale governing the request is redacted to ensure the utmost
7 regard for the privacy rights of the mentioned within a given report.

8 d. In each case involving court-ordered disclosure of information from a
9 Murder Investigation sought in state or federal court, it is Department policy to seek a
10 protective order limiting use of the information to the case at trial and identifying
11 those persons who may properly be granted access to the information. Absent a
12 protective order, it becomes unrealistic to conceive that the large numbers of
13 attorneys, secretaries, law clerks, paralegals and witnesses involved in many cases
14 will be able to maintain proper confidence of personal, private material absent an
15 order which clearly delineates their responsibilities. The orders further request that
16 said records be returned to the Department after the case has terminated, either by
17 final judgment or otherwise. This request serves to ensure that intrusion into the
18 privacy and employment rights of those involved is limited to the particular case in
19 which the facts are relevant.

20 e. Even with a carefully written protective order, the release of portions of
21 a Murder Investigation, without prior judicial review to determine relevancy and
22 assess privacy concerns, ignores the constitutional protection given to individual
23 privacy under the United States and California Constitutions and which a third-party
24 such as the Department is obligated to assert. The issuance of an appropriate
25 protective order makes certain that these privacy concerns are not compromised
26 beyond that degree necessary to the issues before the court. Accordingly, on behalf
27 of the Los Angeles Police Department and those persons identified within a given
28 Murder Investigation, the Defendants respectfully request these procedural

1 protections in the instant case.

2 3 *II. TERMS OF THE PROTECTIVE ORDER*

4 1. Defendants and Plaintiff have agreed that the below-listed documents
5 shall be designated confidential documents and/or writings because Defendants
6 believe, in good faith, that these documents and/or writings are privileged,
7 confidential, private or sensitive nature. This will be accomplished by affixing to
8 such document or writing a legend, such as "Confidential," "Confidential
9 Documents," "Confidential Material Subject to Protective Order" or words of similar
10 effect. Documents and writings so designated, and all information derived therefrom
11 (hereinafter, collectively, "Confidential Information"), shall be treated in accordance
12 with the terms of this stipulation/protective order.

13 Whereas plaintiff has propounded a request for production of documents upon
14 defendants pertaining to official and confidential information, contained in
15 documents maintained by the Los Angeles Police Department, and whereas the
16 parties having met and conferred, and stipulated to the following terms and
17 conditions, the Court hereby orders as follows:

18 1. Defendants may designate as confidential any document or writing
19 that they, in good faith, believe contains information of a privileged, confidential,
20 private or sensitive nature, by affixing to such document or writing a legend, such as
21 "Confidential," "Confidential Documents," "Confidential Documents Subject to
22 Protective Order" or words of similar effect. Documents and writings so designated,
23 and all information derived therefrom (hereinafter, collectively referred to as
24 "Confidential Information"), shall be treated in accordance with the terms of this
25 stipulation and protective order.

26 2. If Plaintiff's counsel believes that any document, writing or
27 information that has been designated by Defendants as Confidential (or an equivalent
28 designation) does not warrant that designation Plaintiff's counsel will advise

Defendants' Counsel. The parties will attempt in good faith to resolve the question of whether the designation is warranted. If the parties are unable to resolve the matter informally, the disagreement will be resolved by the Magistrate Judge (or District Judge, if appropriate). Notwithstanding Plaintiff Counsel's belief that a document, writing or information that has been designated by Defendants as Confidential (or an equivalent designation) does not warrant that designation, Plaintiff's counsel will continue to treat it as such in accordance with the terms of this Protective Order unless and until the parties agree otherwise or the Court orders otherwise.

3. Confidential Information may be used by the persons receiving such information only for the purpose of this litigation. It may not be utilized to seek discovery on any other matter and/or case.

4. Subject to the further conditions imposed by this stipulation, Confidential Information may be disclosed only to the following persons:

(a) Counsel for the parties, parties (w/exception that Plaintiff may not be provided with a copy of the Murder Book), and to experts, investigators, paralegal assistants, office clerks, secretaries and other such personnel working under their supervision.

(b) Such other parties as may be agreed by written stipulation among the parties hereto, or by Court order; and

(c) All Court Personnel in which this case is assigned.

5. Prior to the disclosure of any Confidential Information to any person described in paragraph 4(a) or 4(b), counsel for the party that has received and seeks to use or disclose such Confidential Information shall first provide any such person with a copy of this stipulation, and shall cause him or her to execute, on a second copy which counsel shall thereafter serve on the other party the following acknowledgment:

"I understand that I am being given access to Confidential Information pursuant to the foregoing stipulation and order.

1 I have read the Order and agree to be bound by its terms
2 with respect to the handling, use and disclosure of such
3 Confidential Information.

4 Dated: _____/s/ _____”

5 6. Upon the final termination of this litigation, including any appeal
6 pertaining thereto, all Confidential Information and all copies thereof shall be
7 returned to the Defendant City of Los Angeles through the City Attorney’s Office.
8 All Confidential Information disclosed to any person or party pursuant to any
9 provision hereof also shall be returned to the Defendants.

10 7. If any party who receives Confidential Information receives a
11 subpoena or other request seeking Confidential Information, he, she or it shall
12 immediately give written notice to the Defendants’ counsel, identifying the
13 Confidential Information sought and the time in which production or other disclosure
14 is required, and shall object to the request or subpoena on the grounds of this
15 stipulation so as to obtain an order barring production or other disclosure, or to
16 otherwise respond to the subpoena or other request for production or disclosure of
17 Confidential Material. It should be noted that in no event should production or
18 disclosure be made without written approval by the Defendants’ counsel unless
19 required by court order arising from a motion to compel production or disclosure of
20 Confidential Information.

21 8. Any pleadings, motions, briefs, declarations, stipulations, exhibits
22 or other written submissions to the Court in this litigation which contain, reflect,
23 incorporate or refer to Confidential Information shall be filed and maintained under
24 seal.

25 9. The parties agree that the spirit of confidentiality as protected in
26 this order will apply to all proceedings. To that end, before any protected document
27 or any information derived therefrom is to be put forward, admitted into evidence,
28 discussed in detail or otherwise publicized in Court, the party raising the protected

1 document will inform the other parties and allow for a motion to the Court to close
2 the proceedings to the public.

3 10. Nothing herein shall prejudice any party's rights to object to the
4 introduction of any Confidential Information into evidence, on any evidentiary
5 grounds including but not limited to relevance and privilege.

6 11. During the course of depositions, when counsel makes an
7 objection to a question concerning a protected document or information contained
8 therein, which is the subject of this Stipulation and protective order, or concerning a
9 general area that counsel believes should be covered by the scope of this Stipulation
10 and protective order, those witnesses (as identified in Paragraph 4(a) herein) may
11 answer the question, without waiving the objections, and the questions and answers to
12 those questions will be sealed and covered by the terms of this protective order.
13 Counsel and the parties reserve the right to object to the disclosure of confidential or
14 private information which is not the subject of this Stipulation and protective order.
15 Any documents deemed confidential pursuant to this protective order will be sealed,
16 if they are used as exhibits in any deposition. This agreement does not waive any
17 objections counsel may make, including objections unrelated to the reasons for this
18 protective order.

19 12. This Protective Order survives settlement, trial and/or appeal.

20 13. This Stipulation may be signed in sub-parts and may be
21 transmitted by facsimile as if it was the original document. Defendants will lodge this
22 executed Stipulation with the Court for approval.

23 ...

24 ...

25 ...

26 ...

27 ...

28

14. As a condition of this Protective Order, it is agreed that in the event this case is remanded/transferred out of the Federal Forum to State Court or equivalent, all Confidential/Murder Investigation Documentation and all copies thereof shall be returned to the Defendant City of Los Angeles through the City Attorney's Office. All Confidential/Murder Investigation Information disclosed to any person or party pursuant to any provision hereof also shall be returned to the Defendants.

IT IS SO STIPULATED:

Dated: October 24, 2012

JEFF DOMINIC PRICE

By: 
JEFF DOMINIC PRICE, Esq.

Attorneys for Plaintiff EDWARD ARCH

Dated: October 24, 2012

CARMEN A. TRUTANICH, City Attorney

By: 
CHRISTIAN R. BOJORQUEZ, Deputy City Attorney
Attorneys for Defendants

IT HEREBY IS SO ORDERED:

Dated: Oct. 29, 2012


HON. PATRICK J. WALSH
United States Magistrate Judge

Presented by:

/s/
Christian R. Bojorquez, DCA